

**IN THE HIGH COURT OF UTTARANCHAL  
AT NAINITAL**

**Reserved**

Criminal Appeal No. 1274 of 2001  
854 of 1987 (Old No.)

1. Suresh Ram S/o Sri Joga Ram  
2. Nandan Ram S/o Sri Joga Ram  
3. Smt. Gopuli Devi  
W/o Sri Joga Ram  
All above R/o Village Rankot  
Patti Kunupereti  
Tehsil & District Pithoragarh .....Appellants

Versus

State .....Respondent

Sri Lokendra Dobhal learned counsel for the appellants  
Sri G.S. Sandhu assisted by Sri Rajeev Mohan learned Addl. G.A. for the state

**Coram: Hon'ble M.M. Ghildiyal, J.  
Hon'ble B.C. Kandpal, J.**

(Delivered by Hon'ble B.C. Kandpal, J.)

This criminal appeal arises out against the judgment and order dated 20.03.1987 passed by Sessions Judge, Pithoragarh in S.T. No. 29 of 1986 State Vs. Suresh Ram and others convicting the accused/appellants under Section 302 read with 34 I.P.C. and sentencing them to life imprisonment. Further convicting the appellants under Section 201 I.P.C. and sentencing them to two years R.I.

Brief facts of the prosecution case as emerged out from the record are that a First Information Report was lodged by one Dhani Ram (P.W. 1) on 12.01.1984 at

Patwari Circle Kuupereti stating therein that his daughter Smt. Radhika Devi was married with the accused Suresh Ram who died sometime in night of 05.01.1984 under the suspicious circumstances. Sri Joga Ram father of the accused Suresh Ram as well as other family members cremated Smt. Radhika Devi hurriedly in that very night. On 06.01.1984 i.e. the next day, the complainant received an information with regard to the death of his daughter Radhika Devi in the preceding night as well as about her cremation. However, the complainant through the reliable sources could know that the accused-Suresh Ram and his family members hanged her till death and told to neighbours that she had committed suicide by hanging herself. The allegation was also made in the F.I.R. that the accused persons disappeared the dead body of Smt. Radhika Devi without informing either the Sabhapati of village or the Patwari of the Circle.

One Diwan Ram (P.W.3) brother of the deceased Smt. Radhika Devi had also moved an application before the District Magistrate, Pithoragarh on 11.01.1984 stating therein that his sister Radhika Devi was married with Suresh Ram two years ago. After the marriage Suresh Ram subjected Radhika Devi to cruelty. The mother-in-law and brother-in-law, Smt. Gopuli Devi and Nandan Ram respectively also subjected Smt. Radhika Devi to cruelty. He has further stated in the complaint that on 05.01.1984 Smt. Radhika was seen hale and hearty but in the night she died under the suspicious circumstances and the accused persons did not inform the parents of the deceased in this regard and in a hurried manner disposed

of the dead body of Smt. Radhika Devi in the very night itself. It has further been stated in the report that the complainant through some reliable sources came to know that Smt. Radhika Devi had serious injuries on her head and her hands were mingled with '*flour*' as well as the nose and the mouth were also bleeding.

On the basis of the aforesaid reports Patwari Circle Kuupereti prepared a chick F.I.R. and registered a case against the accused Suresh Ram alone under Sections 302, 201 and 202 I.P.C. During the investigation Diwan Ram moved an application before the District Magistrate that the investigation by the Patwari was not being conducted in an impartial manner. The District Magistrate withdrew the investigation from the revenue police and handed over the same to the regular police.

In persuasion to the order for transferring the investigation to the regular police, the investigation of the case was entrusted to M.P. Vimal-S.I. who started his investigation and after completing the same arrived to the conclusion that the deceased Smt. Radhika Devi met with a sudden death and she was not murdered. The Investigation Officer consequently filed the Final Report on 16.12.1985.

When the Final Report was submitted by the Investigation Officer on 13.12.1985 after about a year, learned Magistrate summoned the complainant Diwani Ram (P.W.3) and recorded his statement. Learned Magistrate was satisfied that it was one of the cases in

which the Final Report should not have been accepted. Therefore, he took the cognizance and thereafter committed the accused persons, namely, Suresh Ram, Nandan Ram and Smt. Gopuli Devi to the court of Session vide order dated 12.12.1986.

Learned Sessions Judge framed the charge under Sections 302/34, 201 I.P.C. on 28.01.1987. Learned Sessions Judge on 20.02.1987 also framed additional charge under Section 498-A I.P.C. against the accused persons.

The accused persons denied of the charges leveled against them and claimed their trial.

The prosecution in order to support its case produced Dhani Ram -P.W.1, Smt. Manuli Devi P.W. 2, Diwani Ram- P.W.3, Moti Ram P.W. 4 and Kishan Singh -P.W.5.

After the evidence of the prosecution was over, the statement of the accused were recorded under Section 313 Cr.P.C. The appellant produced D.W. 1 Rajendra and D.W.2 Bhagwati Prasad in their defence.

Learned trial court, after having perused the entire evidence on record and hearing the learned counsel for the parties, convicted the accused, namely, Suresh Ram, Nandan Ram and Smt. Gopuli Devi under Sections 302/34 and 201 I.P.C. and sentenced them life imprisonment vide judgment and order dated 20.03.1987.

Learned trial court acquitted all of the accused persons of the charge under Section 498-A I.P.C.

Feeling aggrieved by the aforesaid impugned judgment and order the accused preferred appeal before the Hon'ble Allahabad High Court, which has been transferred to this Court, for disposal, after creation of Uttaranchal State.

We have heard learned counsel for the parties and perused the record.

In order to establish the guilt of the appellants pertaining to the murder of Smt. Radhika Devi wife of the accused Suresh Ram, the prosecution has relied on the circumstantial evidence adduced by it.

As per the prosecution case, the incident was alleged to have taken place in the night of 05.01.1984 and the accused/appellants cremated the deceased Smt. Radhika Devi in the same night.

The prosecution has tried to adduce the evidence with regard to the demand of dowry but the prosecution has utterly failed in establishing the guilt of the appellants pertaining to the offence under Section 498-A I.P.C.

However, it is to be assessed whether the prosecution has brought the guilt of the appellants to home by completing the chain of circumstances or not.

Firstly, it has been contended on behalf of the appellant that the First Information Report in the present case has been filed with inordinate delay.

As per the case of the prosecution the incident is alleged to have been taken place in the night of 05.01.1984 while the F.I.R. was lodged on 12.01.1984. It is clear from the evidence on record that the informant Dhani Ram (P.W.1) got the information with regard to the death of his daughter Smt. Radhika Devi in the morning of 06.01.19.84.

The evidence on record shows that Dhani Ram (P.W.1) - father of the deceased has stated in his deposition that the appellant did not inform him with regard to the death of Smt. Radhika Devi in the night i.e. on 05.01.1984. He has further deposed that he got the information with regard to the death of Smt. Radhika Devi on the next day i.e. 06.01.1984 at 8:00A.M. and when he reached the house of the appellants who are the resident of the same village then he saw that the appellants had already cremated the deceased Smt. Radhika Devi. He enquired about this fact with the appellants as to why they did not inform him, then the appellants could not extend any sufficient reply.

It is thus quite clear that the complainant Dhani Ram (P.W.1) had an information with regard to the death of Smt. Radhika Devi in the morning of 06.01.1984. The delay in lodging the First Information Report certainly creates a doubt with regard to the actual occurrence. The

informant Dhani Ram (P.W.1) in his cross examination has stated that the Village Rankot (place of occurrence) is adjacent to village Kothera where the Patwari resides. He has also stated that the house of the Patwari is situated at a distance of 1 <sup>1</sup>/<sub>2</sub> to 2 furlong to his house. He has also stated that he could not lodge the report with Patwari for 7 days on account of the reason that Patwari was not available at his Head Quarter. This witness has further deposed that the place where Kanoongo sits is Gangolihaat which is at a distance of 1 KM from his village but he did not go to Kanoongo in order to lodge the report.

Thus the absence of the Patwari in the village for continuous seven days firstly, itself has not been sufficiently explained. It does not appeal to reason that the Patwari who resides at a very short distance to the house of the complainant, could not get the information pertaining to the death of Smt. Radhika Devi for 7 days. Moreover, in case, if the complainant was interested in lodging the First Information Report with all promptness then he could have lodged the same with the Kanoongo who was present at a distance of 1 K.M. from his house. Keeping silence for 7 days by the complainant certainly casts a doubt about the prosecution case.

Further Smt. Manuli Devi (P.W.2) daughter-in-law of Dhani Ram (P.W.1) has also deposed in her statement that her father-in-law Dhani Ram went to Patwari for lodging the First Information Report on the same day i.e. 06.01.1984 but Patwari was not available at his house.

She has further deposed that she cannot tell as to any effort was made by her father-in-law to trace out the Patwari or not.

Further statement of Kishan Singh (P.W.5) in case, if taken into consideration then it reveals that he was posted as Patwari at the time of the occurrence in that village. He has stated that the report was lodged with him by Dhani Ram (P.W.1) on 12.01.1984. The prosecution has not cared to ask any question to this Patwari with regard to his absence from his house from 06.01.1984 to 12.01.1984

A person, whose daughter has been murdered by the accused, will not sit so idle for bringing the accused persons to book. Keeping mum by the complainant for 7 days in order to lodge the report that too without any sufficient explanation gives serious jolt to the prosecution.

Learned counsel for the appellants has submitted that the prosecution has not been able to prove the actual manner of incident.

In reply to the argument advanced by the learned counsel for the defence, it has been submitted by the learned A.G.A. that it was not possible for the prosecution or the complainant to disclose as to in what manner the incident had taken place and how the murder of Smt. Radhika Devi took place. It has been submitted that the murder of Smt. Radhika Devi was caused in the house of the appellants and therefore, the special knowledge with

regard to the manner of death of the deceased would be with the appellants. Hence it is their burden to show as to how the death of Smt. Radhika Devi took place.

In order to appreciate the arguments advanced by the learned counsel for the parties, it will be essential to access the evidence on record.

The First Information Report was lodged by the complainant Dhani Ram (P.W.1) shows that *"he came to know through the reliable sources that Smt. Radhika Devi was hanged on a tree after committing her murder by Suresh Ram and his family member and thereafter the accused/appellants told their neighbours that Smt. Radhika Devi committed suicide by hanging herself."*

Further the report filed by Diwani Ram (P.W.3) before the District Magistrate, Pithoragarh, reveals that he came to know that Smt. Radhika Devi had serious injuries on her head and her hands were mingled with flour as well as the nostrils and the mouth were also bleeding.

It is further not clear from the evidence of the prosecution that who is the person who told the informant Dhani Ram as well as Diwani Ram with regard to the manner of incident as both these persons have specifically stated in their reports that they came to know through reliable sources about the manner in which Smt. Radhika Devi was murdered. Therefore, under these circumstances it is the burden of the prosecution to

establish the fact with regard to the murder of the deceased by way of cogent and reliable evidence.

Dhani Ram (P.W.1) has stated in his cross examination that a person named as Vish Ram resides in their village who is the brother-in-law (Bahnoi) of the accused Suresh Ram and he met him on 06.01.1984 i.e. next day when Smt. Radhika Devi died and he came to know of the fact pertaining to the death of Smt. Radhika Devi through Vish Ram on 06.01.1984.

It is important to mention here that this person namely, Vish Ram has not been produced by the prosecution.

Withholding this important witness by the prosecution creates a serious doubt about the prosecution case. Had this man been produced by the prosecution then he could have thrown some light with regard to the prosecution case and also with regard to this aspect as to how the complainant came to know about the manner in which the death of Smt. Radhika Devi took place.

Further Diwani Ram (P.W.3) in his cross examination stated that his father lodged the report on the basis of the real facts not on the hearsay. Therefore, in case if complainant lodged the report on the basis of the real fact then the burden is shifted on the shoulder of the prosecution to establish as to in what manner the murder of Smt. Radhika Devi was committed. It is also worthy to mention here that Diwani Ram in his complaint

filed before the District Magistrate, Pithoragarh has specifically mentioned that *"he came to know that his sister had serious injuries on her head and her hands were mingled with flour as well as her nostrils and mouth were bleeding."* Again it is the burden of the prosecution to establish this aspect of the matter by producing the reliable evidence so that the guilt of the accused could be proved beyond reasonable doubt.

It is, therefore, quite clear that the prosecution has utterly failed in establishing the guilt of the accused by not producing any evidence pertaining to this fact as to in what manner the incident had taken place. The recital made in the First Information Report is quite clear that in which manner the murder or the death of the deceased Smt. Radhika Devi took place. Therefore, under these circumstances it cannot be said that this fact with regard to the death of Smt. Radhika Devi was in special knowledge of the accused persons. The prosecution has firstly to discharge its burden by bringing the guilt of the accused person to home on the basis of the cogent and reliable evidence. In the instant case the prosecution has not been able to produce as to in what manner the death or murder of Smt. Radhika Devi took place.

Learned counsel for the State has vehemently stressed on this point that the conduct of the accused/appellants in the present case cannot be said to be proper and this conduct clearly points towards the guilt of the accused.

We do not find any force in this argument as silence of the complainant for about 7 days in lodging the First Information Report, firstly creates a doubt about the prosecution case, secondly, the informant Dhani Ram (P.W.1) himself came to know about the death by Smt. Radhika Devi immediately on the next day. It has come in the evidence that father and brother of the deceased Smt. Radhika Devi did not go to the crematorium as per the custom prevailed in their religion.

The appellants have produced Rajendra (D.W.1) in their defence who has stated that father and brother of the deceased Smt. Radhika Devi had come to the house of the appellants after the death of Smt. Radhika Devi and after staying some time over there they returned back to their house as parents of the deceased do not participate in the cremation of the lady deceased.

Under these circumstances it cannot be said that the conduct of the appellants is liable to be deprecated, moreover, only on the basis of conduct, the conviction cannot be warranted. The prosecution cannot take any benefit on the basis of lacuna in the case of the defence. The prosecution has to stand on his own leg and will have to establish the guilt of the accused/appellants beyond reasonable doubt.

For the reasons stated above we are of the view that the prosecution has utterly failed in establishing the guilt of the appellants pertaining to the murder of Smt. Radhika Devi.

Consequently, the judgment and order passed by the learned trial court convicting the appellants under Sections 302 read with 34 I.P.C. and sentencing them for life imprisonment and further convicting the appellants under Section 201 I.P.C. and sentencing them two years R.I. respectively is liable to be set aside.

Accordingly the appeal is allowed.

**(B.C. Kandpal, J)**

**(M.M. Ghildiyal, J)**

September 29, 2004

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